IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2866 OF 2006

I. N. Shah & Ors. ..Petitioners.

Vs.

Madhuri Hariharan & anr. ..Respondents.

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Mr. K. J. Presswala with Mr. S.A. Bhalwal i/b M/s. Vyas & Bhalwal for the Petitioners.

Ms. Nayana Buch with Mr. Shailesh More for Respondent No.1.

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CORAM: DR. D.Y. CHANDRACHUD, J.

22nd November, 2006.

P.C. :

This Petition has been directed against an order of the Presiding Officer of the School Tribunal dated 9th October, 2006 by which the appeal filed by the First Respondent against the termination of her services as Head Mistress was set aside and the Petitioner was directed to reinstate the First Respondent with backwages. The Tribunal has held that though the First Respondent was appointed on a temporary basis, since the appointment was against a clear and permanent vacancy and the management had followed the requisite procedure prior to the appointment, the management was bound by the provisions of

Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to make a probationary appointment under the law. At the hearing of the Petition, it was submitted on behalf of the Petitioners that the services of the First Respondent were terminated in view of an unrest on the part of the existing members of the staff and in view thereof the senior most teacher was appointed as a Principal. However, the Court was informed that the incumbent in the office of the Principal is due to retire on 31st January, 2007 and that thereafter the management would be ready and willing to comply with the order of the School Tribunal by reinstating the First Respondent as Head Mistress. An adjournment was sought before the Court to enable parties to discuss the possibility of an amicable solution when the matter came up on 20th November, 2006. Accordingly today when the matter is called out the Court has been informed that the parties have agreed to settle their dispute in the following terms which may be recorded by consent and that the Petition may be disposed of without any further reasons being recorded. Learned counsel appearing for the contesting parties state that an authorized representative of the Petitioners is present before the Court and the First Respondent is present in person.

Accordingly, by consent the following order is passed :

i) The Petitioners shall within a period of two months from today pay to the First Respondent an amount of Rs.17,620/- being the earned wages of the First Respondent for the month of May 2005 together with an amount representing 25% of the backwages between 1st June, 2005 till 31st January, 2007 within the same period;

ii) The First Respondent shall be reinstated in service immediately upon the retirement of the incumbent in the office of the Head Mistress on 1st February, 2007. However, in view of the order of the School Tribunal, the original appointment of the First Respondent as Head Mistress on 28th April, 2005 shall be in the capacity of probationer, which probationary period will expire on 27th April, 2007. However, while the First Respondent would be entitled to continuity of service in view of the aforesaid arrangement, she shall have no claim for the remaining part of the backwages save and except for the component of 25% which the management has agreed to pay;

iii) The Petitioners shall notify the competent authority in the Education Department after the First Respondent takes charge on 1st February, 2007 in order to obtain necessary approval to facilitate the disbursal of the grant.

The Petition is accordingly disposed of.